

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company on an Expedited Basis for Exemption under Section 853 for Easements on PG&E Land Allowing Delta Energy Center, LLC to Maintain an Electric Transition Structure for the Delta Project and CPN Pipeline to Maintain Gas Facilities for the Delta Project and the Los Medanos Energy Center Project, or in the Alternative for Approval of Easements under Section 851. (U 39 M)

Application 01-07-031
(Filed July 26, 2001)

In the Matter of the Application of Pacific Gas and Electric Company (U 39 M) for Approval of Leases to Allow CalPeak Power, LLC to Site Generator Plants on Utility Owned Land Adjacent to Substations.

Application 01-06-043
(Filed June 25, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING
CONCERNING PREHEARING CONFERENCE**

As the parties have previously been informed by e-mail, a prehearing conference (PHC) will be held in these matters on Thursday, March 14, 2002 at 10:00 a.m. in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California.

The purpose of the PHC is to discuss issues relating to the hearings that Commission ordered in these matters on the question of whether sanctions should be imposed on Pacific Gas and Electric Company (PG&E) for its delay in

filing the applications, and for misuse of General Order 69-C. *See*, Decision (D.) 01-08-069, *mimeo.* at 23; D.01-08-070, *mimeo.* at 18-19.

Since the issuance of D.01-08-069 and D.01-08-070, PG&E has submitted to the Commission some of the data that was required by these decisions, but has declined to produce other data on the ground that it is privileged.¹ In addition, on November 8, 2001, PG&E filed in both of the above-noted proceedings a “Request for Detailed Specification of Charges and Supporting Evidence”. Another significant development is that on January 22, 2002, the Consumer Services Division (CSD) appointed Chris Witteman as counsel to prosecute these matters on behalf of the Commission.

This series of developments raises a number of special issues that need to be discussed at the March 14 PHC. The first is the manner in which PG&E’s request for a specification of the charges and evidence against it might be provided. In view of the fact that CSD counsel has only recently had an opportunity to start becoming familiar with these cases, he may not be in a position to furnish such specifics on March 14 or for some period thereafter. In that case, the best way of dealing with PG&E’s November 8 motions may be to allow a substantial period of time between the submission of CSD’s direct testimony and the submission of rebuttal testimony by PG&E and other parties. The parties are asked to address this question at the March 14 PHC, as well as the more general question of scheduling.

The second special issue for discussion is the amount of discovery and motion practice that can reasonably be anticipated in these cases. As noted

¹ As to the allegedly privileged matter, PG&E has provided a privilege log.

above, PG&E has declined to produce a substantial number of the documents required by D.01-08-070 and D.01-08-069 on the ground that these documents are protected by one privilege or another. Counsel for CSD should be prepared to state at the PHC whether he expects to challenge any of these privilege claims through one or more motions to compel, and if he does, to suggest a schedule for resolving these motions. CSD counsel should also be prepared to describe in general terms any additional discovery that he needs to undertake.

The third special issue for discussion at the PHC is the status of any settlement negotiations. In view of the denial of PG&E's applications for rehearing of D.01-08-069 and D.01-08-070,² on the one hand, and the potential for a great deal of time-consuming motion practice before any testimony is submitted, on the other, both PG&E and CSD may deem it advantageous to consider settling the sanction phases of these proceedings. If this is the case, the parties should be prepared to discuss in very general terms the status of their settlement discussions.

In addition to the special issues set forth above, the March 14 PHC will focus on the schedule for the sanction phase of these proceedings, as well as on other issues that might need to be addressed in a scoping memo. To aid in these discussions, any party wishing to file a PHC statement shall do so no later than noon on Tuesday, March 12, 2002.

In accordance with the discussion set forth above, **IT IS RULED** that:

² Rehearing of D.01-08-069 was recently denied in D.01-12-023, and rehearing of D.01-08-070 was denied in D.01-12-022.

1. A prehearing conference (PHC) will be held in these matters on Thursday, March 14, 2002, beginning at 10:00 a.m. in the Commission Courtroom at 505 Van Ness Avenue, San Francisco, California 94102.

2. At the PHC, the parties should be prepared to address (a) the manner in which PG&E's November 8, 2001 motions requesting a specification of charges and evidence should be dealt with, (b) the amount of motion practice and additional discovery that can reasonably be anticipated, and (c) the general status of the parties' settlement discussions, if any.

3. Any party wishing to submit a PHC statement shall do so no later than 12:00 p.m. on Tuesday, March 12, 2002. All such PHC statements shall be served by e-mail on the undersigned and on all parties.

Dated March 5, 2002, at San Francisco, California.

/s/ A. KIRK MCKENZIE

A. Kirk McKenzie
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Concerning Prehearing Conference on all parties of record in this proceeding or their attorneys of record.

Dated March 5, 2002, at San Francisco, California.

/s/ JEANNIE CHANG

Jeannie Chang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.